

RECORDED IN No. 7634 Filed & C
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J.C.C.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of January 1, 1975 (hereinafter called this Assignment), by and between EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee (hereinafter called the Lessor or the Vendee) under a Trust Agreement dated as of the date hereof with International Paper Equipment Leasing Corporation, and FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Vendor) under a Finance Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with FMC Corporation (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and Apache Railway Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rent-

als, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to comply with the provisions of Paragraphs 1 and 4 of the Finance Agreement (as defined in the Lease) and to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to and retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agree-

ment which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

4. The Lessor does hereby irrevocably constitute the Vendor the Lessor's true and lawful attorney, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. On each Closing Date (as defined in the Security Documentation) the Lessor will furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the

interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Arizona, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee,

by


~~Senior~~ Vice President

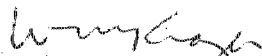
[Corporate Seal]

Attest:


Assistant Trust Officer

FIRST PENNSYLVANIA BANK N.A.,
as Agent,

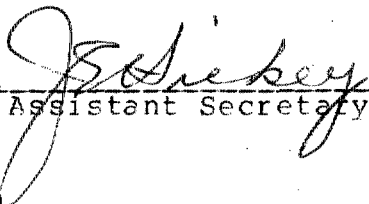
by



Vice President

[Corporate Seal]

Attest:



Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COCK,)

On this 20 day of February 1975, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who, being by me duly sworn, says that he is ~~Senior~~ Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Norma Schappeler
Notary Public

[Notarial Seal]

My Commission expires May 27, 1975

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF PHILADELPHIA,)

On this 27th day of February 1975, before me personally appeared Mr. Kruger, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST PENNSYLVANIA BANK N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Elyse D. Seiden
Notary Public

[Notarial Seal]

My Commission expires

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires March 1, 1976

LESSEE'S CONSENT AND AGREEMENT

The undersigned, APACHE RAILWAY COMPANY, an Arizona corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the Assignment of Lease and Agreement dated as of January 1, 1975 (hereinafter called the Lease Assignment), between EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee under a Trust Agreement dated as of January 1, 1975 (such agreement being hereinafter called the Trust Agreement and said bank being hereinafter called the Lessor), with International Paper Equipment Leasing Corporation (hereinafter called the Beneficiary), and FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Agent) under the Finance Agreement referred to in the Lease Assignment, hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment.

As an inducement to the Investor, a party to the Finance Agreement (a copy of which has been delivered to the Lessee), to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreement referred to in the Lease Assignment, pursuant to which the Lessor is financing its purchase of units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease; as an inducement to the Lessor to enter into the Lease; as an inducement to FMC CORPORATION (hereinafter called the Builder) to enter into the Conditional Sale Agreement; and in consideration of other good and valuable consideration, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Agent, the assignee named in the Lease Assignment, at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent); it being hereby agreed that

the obligation of the Lessee to pay all the aforesaid Payments is absolute and unconditional except as provided in § 4 of the Lease;

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Agent shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Agent against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease prior to or pari passu with the right of the Agent to apply such payments as provided in the Lease Assignment;

(4) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(5) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(6) if any Units shall be excluded from the Conditional Sale Agreement pursuant to Article 4 thereof, then the Lessee shall be obligated to purchase such Units and pay the full purchase price therefor, determined as provided in the Conditional Sale Agreement, such payment to be in cash on the delivery of such Units, either directly or, in case the Lessee shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Lessee shall determine and as shall be reasonably acceptable to the Builder.

This Consent and Agreement, when accepted by the

Agent, the Lessor, and the Builder by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Arizona and, for all purposes, shall be construed in accordance with the laws of said State.

APACHE RAILWAY COMPANY,

by Flake Mills
Vice President

[Corporate Seal]

Attest:

RA Miller
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the first day of January 1975.

FIRST PENNSYLVANIA BANK N.A.,
as Agent,

by Wm. J. Ryan
Vice President

EXCHANGE NATIONAL BANK
OF CHICAGO, as Trustee,

by Richard L. [Signature]
Senior Vice President

FMC CORPORATION,

by Donald C. Osburn
Vice President

